IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 386 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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CHUNIBHAI @ SUNILBHAI JERAMBHAI RADADIA
Versus
STATE OF GUJARAT

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Appearance :
MR YOGESH S LAKHANI for Applicant
MR AY KOGJE APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 19/06/2006

ORAL JUDGMENT

1 Heard learned Senior Counsel Mr. Y.S. Lakhani for the applicant and learned APP Mr. A.Y. Kogje for the respondent State. Upon request of learned counsels, the matter was finally heard today and RULE was waived by learned APP.

2 The present applicant came to be charge-sheeted for the offences punishable under Sections 304, 337, 338 and 427 of the Indian Penal Code. The incident in question took place at Surat in five storeyed building wherein in the ground floor the present applicant accused was running a manufacturing factory of sharan with electric furnace. On the fateful day on which the explosion took place in the said building, not only the said five storeyed

building collapsed but neighbouring two buildings also collapsed, killing almost 40 to 41 persons and, hence, the above said charge-sheet against the present petitioner.

3 The charge for the above said offences came to be framed against the petitioner on 19th of November, 2004, vide Exh.8 for the offences punishable under Sections 304, 337, 338 and 427 of IPC, and thereafter on not pleading guilty by the petitioner, around 14 witnesses were examined. On 17.3.2006 in said Sessions Case No. 219 of 2003, vide Exhibit 137 an application came to be filed by the present petitioner before the Trail Court under Section 216 of the Code of Criminal Procedure stating that the charge can be altered by the court at any stage and that having regard to the facts of the case the charge against the petitioner under Section 304 of the Indian Penal Code would not stand, but if at all, if the material is taken into consideration, only charge under Section 304-A of the Indian Penal Code would stand and, therefore, an alteration in charge was requested from I.P.C. Section 304 to 304-A.

4 However, the said application after hearing the parties came to be decided by the learned Judge vide his order dated 5th of April, 2006 rejecting the said application.

5 Learned Trial Judge observed that in this case at least 14 witnesses were examined. When charge was framed against the

petitioner, the framing of the charge under Section 304 was not objected by the accused. In the cross-examination of all the five doctors examined by the prosecution, the fact that charge under Section 304-A is made out was not brought on the record by the accused. It was observed that it was not the defence of the accused that the incident might have occurred on account of negligence of the accused and that accused had no idea of the seriousness of the incident. For these reasons only, which are reproduced almost verbatim, the application came to be dismissed by the learned Trial Judge.

6 Having heard learned counsels and going through the record, it clearly appears that the merits of the issue which was sought to be raised by the accused, could not be properly identified and decided. Needless it is to observe that, the ingredients of charge under Section 304-A are absolutely and totally different from the offence under Section 304 of the Indian Penal Code. One is causing death by rash and negligence act and the other is the culpable homicide not amounting to murder. There is vast difference between the ingredients of these two offences as described in the Indian Penal Code.

7 However, it is seen that the accused filed very short application without giving proper grounds as to how the facts of the case are not falling within the scope of Section 304 and are falling

within Section 304-A. Like wise, the learned Judge also ought to have endeavoured to bring it on the record that, the facts revealed in police papers as well as in the evidence of the witnesses, which are recorded till today, what offence and how is disclosed and whether the charge on the say of the accused was required to be altered. It is not expected that the exercise which is to be undertaken by the trial court should be undertaken by this court in revisional jurisdiction. The revisional jurisdiction authorises this court to examine the order in question whether the order is invalid, improper or illegal. This is possible only when a well reasoned order is placed for adjudication before this Court under revisional jurisdiction. As stated above, the order passed which is impugned in this Revision Application is unreasoned one. This is so because both the parties should bring it before the court detailed grounds and reasons for controverting those grounds which ultimately may be snowballing in a reasoned order. Otherwise, this court will have to look at the application and going for searching the papers and undertake the exercise which is required to be undertaken by the Trial Court and find out the reasons for accepting or not accepting the contentions raised. This is never expected from this Court.

8 In this view of the matter, the issue of altering the charge is required to be remanded to the trial court for proper fresh adjudication. It is directed that within three weeks from today, the applicant shall file fresh application with proper detailed grounds

for alteration of charge from under Section 304 of the Indian Penal Code to under Section 304-A of the Indian Penal Code. Prosecution as well as the accused both will be given fresh opportunity by the Trial Court to be heard fully. The Trial Court thereafter shall pass detailed reasoned order as to how the application of the accused is acceptable or not acceptable. However, while adjudicating this issue afresh, the learned trial judge shall not be influenced by the order passed by it on 05th of April, 2006. In that view of the matter, the order impugned in this Revision Application stands quashed and set aside. It is further directed that till the present petitioner submits fresh application, as aforesaid, before the trial court and the same is decided according to law, as aforesaid, the trial shall not be proceeded further. If the final decision in respect of this fresh application of altering of the charge is against the petitioner, the Trial Judge shall give some time to the petitioner to approach higher forum.

9 With the above said direction, this Criminal Revision Application stands disposed of. Rule is made absolute to the above extent.

(J.R. VORA, J.)

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